IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 6538 OF 2005

Netaji Gorakhnath Jadhav. ... Applicant.

Versus.

The State of Maharashtra. ... Respondent.

Shri Umesh Mankapure for the Applicant.

Shri R.Y.Mirza, A.P.P.for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 4th October, 2005.

P.C.:

1. Heard the learned Advocate for the Applicant and the learned A.P.P. for the State.

2. An offence was registered in the year 2003 under section 363, 366 read with section 34 of the Indian Penal Code. The Applicant and co-accused Vijay applied for anticipatory bail before the Sessions Court. By order dated 25th February 2005, the Sessions Court granted anticipatory bail with a direction to both the Accused to appear along with the prosecutrix before the Investigating Officer on 26th February 2005 between 11.00 a.m. to 2.00 p.m. The learned Additional Sessions Judge by the same order passed a very peculiar direction observing that if the Applicants do not appear before the Investigating Officer, the bail granted will stand automatically cancelled. Prima-facie such a direction of automatic cancellation could not have been

given by the learned Judge.

3. It appears that the Applicant and the co-accused again expected arrest in connection with the same offence and therefore, they made a second application for grant of anticipatory bail. By order dated 16th September 2005 the said application came to be rejected. The learned Judge held that in so far as the co-accused is concerned anticipatory bail is already granted by the earlier order and so far as the present Applicant is concerned, the earlier self operative order became operative because of the absence of the Applicant on 26th February 2005 and the anticipatory bail stands cancelled.

4. After having heard the Advocates appearing for the parties, I find that the approach of the learned Additional Sessions Judge was erroneous. In the first place while granting anticipatory bail by order dated 25th February 2005, the learned Judge could not have directed that the anticipatory bail will stand automatically cancelled. The learned Judge while passing the said order recorded a finding that the Applicant is entitled to anticipatory bail. There is some material on record to show that the Applicant attended the concerned Police Station on 26th February 2005. There is an affidavit of the prosecutrix to that effect.

5. The allegation of the prosecution in the offence registered in the year 2003 relates to kidnapping of one Sindhu Dashrath Surve. It appears that the said Sindhu has married with the co-accused on 19th January 2005. Considering the facts of the case, undue harassment will be caused to the Applicant if the anticipatory bail is not granted to the Applicant.

6. Hence the following order is passed:

(i) In the event of the arrest of the Applicant in connection with C.R.No.90 of 2003 registered with Vita Police Station, Taluka Khanapur, Dist. Sangli, the Applicant shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.15,000/- with one or two sureties in the like amount.

(ii) The Bail is granted subject to condition that the Applicant will attend the concerned Police Station as and when called upon to do so till filing of the charge sheet.

(iii) The Bail is granted subject to condition that the Applicant shall not, directly or

indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/ Investigating Agency. The Applicant shall not tamper with the prosecution evidence.

(iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(v) This order will enure to the benefit of the Applicant only till charge sheet is filed. Thereafter he will be free to apply to the appropriate Court for appropriate relief.

(vi) Application is disposed of in above terms.

(vii) The parties to act upon an authenticated copy of this order.

Judge.